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No. 03-1297

Supreme Court, U.S.
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In The
Supreme Court of the United States

LI YU, ADMINISTRATOR OF
DECEASED WEI WU'S ESTATE,

Petitioner,

v.

RICK PERRY, IN HIS OFFICIAL CAPACITY ONLY
AS THE GOVERNOR OF STATE OF TEXAS;
DARLENE BYRNE, INDIVIDUALLY AND IN HER
OFFICIAL CAPACITY AS TEXAS STATE COURT
JUDGE; GREG ABBOTT, IN HIS OFFICIAL CAPACITY
AS TEXAS ATTORNEY GENERAL, AND
JOHN CORNYN, IN HIS OFFICIAL CAPACITY,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

RESPONDENT JUDGE DARLENE BYRNE'S BRIEF IN OPPOSITION TO CERTIORARI

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QUESTION PRESENTED

Whether Petitioner's complaints against Judge Byrne are barred as a matter of law by judicial immunity.

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RESPONDENT JUDGE DARLENE BYRNE'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

INTRODUCTION

The Court of Appeals for the Fifth Circuit correctly affirmed the District Court's May 20, 2002 order, which *inter alia*, granted Respondent Judge Byrne's motion to dismiss. Petitioner's complaints against Judge Byrne relate to actions taken in her official judicial capacity. Judicial officers are entitled to immunity from claims arising out of acts performed in the exercise of judicial functions. Thus, all of Petitioner's claims against Judge Byrne are barred by judicial immunity. The District Court properly dismissed Petitioner's claims and the Court of Appeals for the Fifth Circuit properly affirmed the District Court's order of dismissal.

STATEMENT OF THE CASE

Judge Byrne has served as a District Judge in Travis County, Texas since her election in 2000. On December 11, 2000, Petitioner filed two Original Petitions in Travis County, Texas District Court (the "State Court Lawsuits"). Judge Byrne conducted official proceedings in the State Court Lawsuits.

On March, 11, 2002, Petitioner filed a complaint in the United States District Court for the Western District of Texas, Austin Division (the "Federal Court Lawsuit") against Judge Byrne, Texas Governor Rick Perry and

then-Texas Attorney General John Cornyn.[1] Petitioner alleged that Judge Byrne's "excessive participation in enforcement of Texas unconstitutional statutes in plaintiff's case has gone too far and been beyond her official capacity, thus defendant Byrne is sued in her individual and official capacities respectively."

Specifically, Petitioner alleged that Judge Byrne improperly abated one of the State Court Lawsuits and thereby deprived Petitioner of her Constitutional rights. Additionally, Petitioner alleged that Judge Byrne failed to discipline lawyers opposing Petitioner's discovery. Petitioner further complained that Judge Byrne refused to appoint counsel for Petitioner's decedent and minor son. Petitioner also alleged that Judge Byrne conspired with attorney Kelly Nye to ensure that Petitioner's case would be assigned to her court. Finally, Petitioner claimed that Judge Byrne refused to discipline certain lawyers for alleged misconduct at a hearing.

All of Petitioner's claims against Judge Byrne relate to her official actions as a judge presiding over the State Court Lawsuits.

On April 11, 2002, Judge Byrne filed her motion to dismiss with supporting brief. On April 29, 2002, Petitioner filed a response. Judge Byrne filed a reply on May 6, 2002. On May 20, 2002, the District Court dismissed Petitioner's claims against Judge Byrne because "[a]ll of Yu's allegations concerning Judge Byrne relate to actions she purportedly took while adjudicating Yu's state court

[1] Following General Cornyn's election to the United States Senate, Greg Abbott substituted as the Texas Attorney General defendant.

lawsuits, in the course of her official capacity as Travis County District Judge." Pet'r App. at m. Thus, Judge Byrne was immune from liability. Pet'r App. at n.

In the same order, the district court also dismissed all claims against Texas Governor Rick Perry and granted then-Texas Attorney General John Cornyn's motion for partial summary judgment on Petitioner's claims against him in his individual capacity. Pet'r App. at n-q. Though the District Court had not yet rendered a final decision nor entered final judgment in this case, Petitioner filed an interlocutory appeal to the Court of Appeals for the Fifth Circuit (the "Fifth Circuit"), which was dismissed. *Yu v. Rick Perry, et al.*, No. 02-50615 (5th Cir. August 20, 2002). Petitioner then filed a petition for writ of certiorari, which was denied. *Yu v. Rick Perry, et al.*, No. 02-777 (U.S. January 21, 2003).

On April 23, 2003, the District Court dismissed Petitioner's remaining claims pending against General Cornyn in his official capacity and entered final judgment. Pet'r App. at d-j. Petitioner appealed the District Court's orders dismissing her claims to the Fifth Circuit. The Fifth Circuit agreed that all claims against Judge Byrne are barred by judicial immunity and affirmed the District Court's order. *Yu v. Rick Perry, et al.*, No. 03-50502 (5th Cir. Dec. 17, 2003).

Petitioner now seeks certiorari from the Fifth Circuit's order affirming the District Court's orders of dismissal.

REASONS FOR DENYING THE PETITION

I. Petitioner's Claims Against Judge Byrne Are Barred As A Matter of Law By Judicial Immunity.

A. Standard of Review

When reviewing the District Court's May 20, 2002 order dismissing all claims against Judge Byrne and the Fifth Circuit opinion that affirmed the District Court, the Court shall "accept all of the factual allegations in [P]etitioner's complaint as true and ask whether, in these circumstances, dismissal of the complaint was appropriate." *Berkovitz v. United States*, 486 U.S. 531, 540 (1988); *see also Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163 (1993).

B. Argument

Although Petitioner challenges the District Court and Fifth Circuit rulings regarding Judge Byrne, her petition for a writ of certiorari fails to specify directly her claims against Judge Byrne. And Petitioner never addresses the controlling issue in this case – that Judge Byrne is immune from liability for her official judicial acts.

In 1872 the Court recognized the doctrine of judicial immunity. *See Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 351 (1872). The Court held that "judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." *Id.* at 351.

The Court explained its justification for judicial immunity:

> For it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself. Liability to answer to every one who might feel himself aggrieved by the action of the judge, would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful.

Id. at 347.

Only two exceptions to judicial immunity exist. A judge is not immune from liability when he or she acts without subject matter jurisdiction. *Bradley*, 80 U.S. (13 Wall.) at 351-52. Thus, "the necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him." *See Stump v. Sparkman*, 435 U.S. 349, 356 (1978). Petitioner has never plead nor proven that Judge Byrne lacked subject matter jurisdiction. Further, the doctrine only applies to "judicial acts." *See Forrester v. White*, 484 U.S. 219, 227 (1988).

In *Sparkman*, the Court described the necessary attributes of a "judicial act." 435 U.S. at 361. The court found that the factors relevant in determining whether an act is judicial "relate to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity." *Id.* at 362.

In *Sparkman*, plaintiff sued a judge in his official judicial capacity, like Petitioner here. *See id.* at 353. The

District Court found that the judge was acting in his judicial role with subject matter jurisdiction at all material times. *Id.* at 354-55. Thus, no federal action would lie against the judge because he was immune from suit. *Id.* The Court agreed that "[a] judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors." *Id.* at 359.

The Court also found that the judge had jurisdiction over the case and that his acts were "judicial acts." *Id.* at 357, 362. Illinois law granted the judge "exclusive jurisdiction in all cases at law and in equity." *Id.* at 357 (internal citations omitted). Further, since no Illinois statute or case law restricted the judge's jurisdiction or otherwise prohibited him from considering the petition presented to him, the judge plainly had jurisdiction over the subject matter. *Id.* Also, approving the petition for sterilization was a protected "judicial act." *Id.* at 362. Thus, the judge was immune from liability. *Id.*

Similarly, in this case, Judge Byrne held jurisdiction over Petitioner's case and her actions were protected "judicial acts." The Texas Constitution grants District Courts "exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body." TEX. CONST. art. V, § 8. As a District Court judge, Judge Byrne has "the power to issue writs necessary to enforce [the court's] jurisdiction." *Id.*

Further, all of Judge Byrne's acts that Petitioner challenges are "judicial acts." As in *Sparkman*, Judge

Byrne was acting as a judge, and the parties dealt with Judge Byrne as a judge, when she performed the challenged acts. Similarly, all of the challenged acts, including dismissing the State Court Lawsuits, can only be performed by a judge. Under the factors articulated by the Court in *Sparkman*, Judge Byrne's acts constituted judicial acts entitled to judicial immunity. *See Sparkman*, 435 U.S. at 362.

Because Judge Byrne was acting in her judicial capacity with jurisdiction over the State Court Lawsuits, judicial immunity shields Judge Byrne from liability. The District Court properly dismissed Petitioner's claims against Judge Byrne and the Fifth Circuit properly affirmed the District Court's dismissal. Petitioner's petition for a Writ of Certiorari should be denied.

CONCLUSION

The Court has long held that judicial officers, like Judge Byrne, are immune from liability for actions taken in their judicial capacity. The District Court correctly dismissed Petitioner's claims against Judge Byrne on this basis and the Fifth Circuit correctly affirmed the District Court's orders.

For the foregoing reasons, Judge Byrne respectfully requests that this Court deny the Petition.

Respectfully submitted,

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